

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

SARAH ZITO; ALVARO SARMIENTO, JR.;	)	Civil Action No.: 2:20-cv-3808-MBS
MARK SHINN; and DANIEL BERMUDEZ, on	)	
behalf of themselves and all others similarly	)	
situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	<b>NOTICE OF REMOVAL</b>
	)	
STRATA EQUITY GROUP, INC. n/k/a STRATA	)	
EQUITY GLOBAL, INC.; STRATA AUDUBON,	)	
LLC; STRATA VERIDIAN, LLC; PINNACLE	)	
PROPERTY MANAGEMENT SERVICES, LLC;	)	
WENDI DAMI-VAZQUEZ; JACINTA	)	
WILLIAMS; and CONSERVICE, LLC,	)	
	)	
Defendants.	)	
	)	

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Defendant Pinnacle Property Management Services, LLC (“Pinnacle”), by and through its undersigned counsel, and pursuant to 28 U.S.C. §§ 1332, 1446 and 1453, hereby gives notice that it has removed from the Berkeley County Court of Common Pleas the action titled *Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez, on behalf of themselves and all others similarly situated v. Strata Equity Group, Inc. n/k/a Strata Audubon, LLC; Strata Veridian, LLC; Pinnacle Property Management Services, LLC; Wendi Dam-Vazquez; Jacinta Williams; and Conservice, LLC*, Case No. 2020-CP-08-02090, to this Court, the United States District Court for the District of South Carolina, Charleston Division. The removal is based on the following grounds:

**A. Parties and Citizenship**

1. Pinnacle is a Delaware limited liability company with a principal place of business in Texas. It is therefore a citizen of Delaware and Texas under 28 U.S.C. § 1332(d)(10).

2. Plaintiffs Sarah Zito; Alvaro Sarmiento, Jr., Mark Shinn, and Daniel Bermudez are alleged to be residents of South Carolina.

3. Upon information and believe, Defendants Wendi Dam-Vazquez and Jacinta Williams reside in and are citizens of South Carolina, but Pinnacle contends that they are fraudulently joined, as there is no plausible allegation that these individuals are personally liable to Plaintiffs.

4. Pinnacle does not know the citizenship of the other members of the putative class or the other Defendants.

**B. Timeliness of Removal**

4. On or about September 22, 2020, Plaintiffs Sarah Zito; Alvaro Sarmiento, Jr.; Mark Shinn; and Daniel Bermudez, on behalf of themselves and all other similarly situated (“Plaintiffs”) commenced this civil action in Berkeley County Court of Common Pleas by filing a Summons and Complaint.

5. Pinnacle was served with the Summons and Complaint on September 30, 2020. Thus, removal is timely. *See* 28 U.S.C. § 1446(b)(2)(B).

**C. Grounds for Removal – Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)**

6. Pinnacle removes the above-entitled state court action to this Court pursuant to 28 U.S.C. §§ 1332(d), 1446, and 1453, because this case is subject to removal under CAFA.

7. This case is removable under CAFA because: (1) it is a civil class action involving an amount in controversy exceeding five million dollars (\$5,000,000), exclusive of interest and costs; (2) the number of members of the proposed plaintiff class exceeds 100; and (3) at least one

member of the proposed plaintiff class is diverse from at least one defendant. *See* 28 U.S.C. § 1332(d).

8. First, this action involves an amount in controversy exceeding five million dollars (\$5,000,000). Here, Plaintiffs have alleged damages in the form of all fees paid for water, sewer, administrative fees and new account fees from all tenants living in two apartment complexes with 425 apartments over a period of years.<sup>1</sup> Plaintiff also seeks: (1) fines under S.C. Code Ann. § 58-5-370, which could reach \$100 per tenant for each bill sent to each tenant, on a monthly basis (Compl. ¶ 102); (2) punitive damages (Compl. ¶ 112); (3) treble damages under the South Carolina Unfair Trade Practices Act (“SCUTPA”) (Compl. ¶ 132); (4) attorneys’ fees, expert fees, costs, and expenses under SCUTPA (Compl. ¶ 133); and (5) a declaratory judgment and injunctive relief. (Compl. ¶¶ 134-139.) While Pinnacle does not believe Plaintiffs are entitled to any recovery, they have alleged that Defendants sent tortious and/or wrongful utility bills to more than 400 residents every single month for four years, and have requested actual damages, punitive damages, and fines for each such instance. Upon information and belief based on the allegations in the Complaint, Plaintiffs are seeking allegedly improper water, sewage, administrative and account set up fees paid by hundreds of tenants each month for four years, fines in excess of \$1,500,000, unspecified attorneys’ fees which are known to be significant in class action matters, unspecified punitive damages presumably at a multiple up to the limits of the due process clause, and injunctive relief, which easily exceeds the jurisdictional threshold of \$5,000,000. In light of the aforementioned alleged damages and the nature of the damages sought, the aggregate amount in controversy exceeds the required amount under CAFA.

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<sup>1</sup> The putative class includes tenants from one complex from September 28, 2016, until the present and tenants from a second complex from January 31, 2018, to the present.

9. Second, the number of members in the proposed class exceeds 100. The Complaint alleges that the “number of members of the Class [] exceeds 425 persons.” (Compl. ¶ 63.)

10. Third, at least one member of the plaintiff class is diverse from at least one defendant. Pinnacle is a limited liability company (“LLC”). For purposes of removal under CAFA, an LLC is a “citizen of the State where it has its principal place of business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10); *see also Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698 (4th Cir. 2010). Pinnacle is incorporated in Delaware with a principal place of business in Texas. The named Plaintiffs in this action are citizens of South Carolina. As a result, at least one member of the proposed plaintiff class is diverse from one defendant, namely Pinnacle.

11. Moreover, no consent is required for removal. Nonetheless, Strata Equity Group, Inc. n/k/a Strata Audubon, LLC, Strata Veridian, LLC, and Conservice, LLC consent to removal. Pursuant to 28 U.S.C. § 1453(b), a class action “may be removed by any defendant without the consent of all defendants.”

12. In addition, Defendants Wendi Dam-Vazquez and Jacinta Williams have been fraudulently joined, and Pinnacle is not aware of them being served, as no proof of service has yet been filed in the state court, and counsel for Plaintiffs has not responded to undersigned counsel’s inquiries about service on those putative defendants. *See Hughes v. Wells Fargo Bank, N.A.*, 617 F. App’x 261 (4th Cir. 2015).

**C. Compliance with 28 U.S.C. § 1446**

13. A copy of all process and pleadings filed by Plaintiff are attached hereto as Exhibit A. Contemporaneously with the filing of this Notice of Removal, written notice has been served upon Plaintiffs through Plaintiffs’ counsel of record and a true and correct copy of this Notice of

Removal has been or will be filed with the Clerk of Court for Berkeley County, South Carolina, as required by 28 U.S.C. § 1446(d).

14. The Court of Common Pleas for Berkeley, South Carolina is located within the jurisdiction of the United States District Court for the District of South Carolina, Charleston Division; therefore, this Court is the proper one for removal of this action.

15. Pinnacle has submitted the required filing fee to the Clerk of the Court.

16. By filing this Notice, Pinnacle does not waive any defense that may be available to them.

17. In the event any question arises as to the propriety of the removal of this matter, Pinnacle requests the opportunity to present briefs, oral arguments, and if necessary, additional affidavits and other evidence in support of the position that removal is proper.

WHEREFORE, Pinnacle respectfully requests that the action now pending in the State of South Carolina, Berkeley County, Court of Common Pleas, as Case No. 2020-CP-08-02090, proceed before this Court as an action properly removed.

Dated: October 29, 2020

GORDON & REES LLP

By /s/Henry W. Frampton  
Henry W. Frampton, IV (Fed. 10365)  
E-mail: [hframpton@grsm.com](mailto:hframpton@grsm.com)  
Peter G. Siachos (Fed. 07591)  
E-mail: [psiachos@grsm.com](mailto:psiachos@grsm.com)  
Victoria T. Kepes (Fed. 13000)  
E-mail: [vkepes@grsm.com](mailto:vkepes@grsm.com)  
40 Calhoun Street, Suite 350  
Charleston, SC 29401  
Telephone: 843.278.5900  
*Attorneys for Defendant Pinnacle Property  
Management Services, LLC*